

**Applicant: Michael J. Fell**  
**Application No.: 09/989,636**

### **REMARKS**

Claims 1-10, 13-16, 19-26, 31-33, and 36-41 are currently pending in this application. By the foregoing Amendment, Applicant has amended claims 1, 3, 10, 16, 24, 26, 31, and 31 and canceled claims 11, 12, 17, 18, 27-30, 34, and 35.

No new matter has been added to the application by this Amendment.

### **CLAIM REJECTIONS - 35 U.S.C. § 112**

Claims 16-30, 32, and 33 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended claims 16, 26, 32, and 33 as required by the Examiner. Applicant respectfully requests that the Examiner reconsider and withdraw the Section 112 rejection.

### **CLAIM REJECTIONS - 35 U.S.C. § 103**

#### **Snyder**

Claims 16-18, 20, 24, 26-32, 34, 35, 37, and 39 have been rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent 3,640,389 ("Snyder"). Applicant respectfully submits that the rejection of claims 17, 18, 27-30, 34, and 35 is moot due to the cancellation of those claims. Applicant respectfully traverses this rejection as applied to the remaining amended claims.

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Snyder discloses a modular shelving unit having a base section (30). Snyder fails to disclose a merchandising element detachably engaged with a lateral side wall of the base. Further, Snyder fails to disclose, teach, or suggest a merchandising element engaged with any part of the base section (30). Contrary to the Examiner's assertion that the Snyder component 31 is the equivalent of Applicant's claimed merchandising element, the component identified by the Examiner is a structural front panel (31) that is not a detachably engaged merchandising element as understood by those skilled in the art. Snyder also fails to disclose, teach, or suggest a second merchandising element or any merchandising element whatsoever. Snyder absolutely fails to disclose, teach or suggest using a merchandising element that has a shape corresponding to the product being sold.

Regarding claim 16, Snyder completely fails to disclose, teach or suggest "detachably engaging a first merchandising element with to the lateral side wall of the base." As detailed above, Snyder fails to disclose, teach or suggest any merchandising elements whatsoever. The component referred to by the Examiner is just the equivalent of Applicant's claimed lateral side wall.

Claim 16 is further patentable because Snyder absolutely fails to disclose, teach or suggest any merchandising element that is shaped like a product.

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Modifying Snyder to form Applicant's claim 16 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure. Claim 20 depends from claim 16 and, accordingly, is also patentable over Snyder.

Claim 24 is patentable over Snyder as Snyder fails to disclose, teach or suggest a first merchandising element; a second merchandising element; or any coordination of the two, as detailed above. Furthermore, Snyder fails to disclose, teach or suggest a base having a masonry appearance. Snyder utterly fails to disclose, teach or suggest an illuminated sign having a frame around a perimeter and a major surface with a translucent material thereover to define an interior for housing a light source. Modifying Snyder to form Applicant's claim 24 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Claim 26 is patentable over Snyder as Snyder fails to disclose, teach or suggest a first merchandising element; a second merchandising element; or any coordination of the two, as detailed above. Furthermore, Snyder fails to disclose, teach or suggest a supporting element formed by one of a peg board or a slat wall. Modifying Snyder to form Applicant's claim 26 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in

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**Applicant's disclosure.**

Claim 31 is patentable over Snyder as Snyder fails to disclose, teach or suggest "a base having spaced apart opposed face portion that define a receiving slot between them which extends generally laterally entirely across a top surface of the base". Accordingly, Snyder must also fail to disclose, teach or suggest space apart opposing walls that provide upright support to the signage. Modifying Snyder to form Applicant's claim 31 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure. Claims 32, 37, and 39 depend from claim 31 and, accordingly, are also patentable over Snyder.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder in view of Huston**

Claim 19 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of U.S. Patent 4,611,717 ("Huston"). Applicant respectfully traverses this rejection as applied to the amended claim.

As detailed above, Snyder completely fails to disclose, teach or suggest: "detachably engaging a first merchandising element with to the lateral side wall of the base"; any merchandising elements whatsoever; and any merchandising

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element that is shaped like a product. Huston fails to remedy any of these defects. Additionally there is no motivation to make the suggested combination.

Modifying Snyder in view of Huston to form Applicant's claim 19 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder in view of Valentine et al.**

Claim 21 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of U.S. Patent 4,403,554 ("Valentine et al."). Applicant respectfully traverses this rejection as applied to the amended claim.

As detailed above, Snyder completely fails to disclose, teach or suggest: "detachably engaging a first merchandising element with to the lateral side wall of the base"; any merchandising elements whatsoever; and any merchandising element that is shaped like a product. Valentine et al. fail to remedy any of these defects. Additionally there is no motivation to make the suggested combination as Valentine et al. only disclose, teach, or suggest an exhibit stand that is not meant to hold products.

Applicant respectfully requests that the Examiner reconsider and withdraw

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this rejection.

**Snyder in view of Valentine et al. and Huston**

Claim 22 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of Valentine et al. and Huston. Applicant respectfully traverses this rejection as applied to the amended claim.

Claim 22 depend on claims 21, and 16. As detailed above, Snyder, Valentine et al., and Huston fail to disclose, teach, or suggest all of the elements of claims 16 and 21. Accordingly, Applicant respectfully suggests that claim 21 is patentable over this rejection.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder in view of Sournalis**

Claim 23 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of U.S. Patent Re. 36,676 ("Sournalis"). Applicant respectfully traverses this rejection as applied to the amended claim.

As detailed above, Snyder completely fails to disclose, teach or suggest: "detachably engaging a first merchandising element with to the lateral side wall of the base"; any merchandising elements whatsoever; and any merchandising element that is shaped like a product. Sournalis is directed to a MORTAR AND

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**DEBRI SYSTEM** and clearly fails to remedy any defects related to merchandising, shelving, coordination, or the like. Additionally there is no motivation to make the suggested combination as Sourlis is directed to building stonework for use in physical structures.

Modifying Snyder in view of Sourlis to form Applicant's claim 23 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder in view of Meeker et al.**

Claim 25 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of U.S. Patent 5,438,938 ("Meeker et al."). Applicant respectfully traverses this rejection as applied to the amended claim.

Claim 25 depends from claim 24 and is patentable over Snyder as Snyder fails to disclose, teach or suggest a first merchandising element; a second merchandising element; or any coordination of the two, as detailed above. Furthermore, Snyder fails to disclose, teach or suggest a base having a masonry appearance. Snyder utterly fails to disclose, teach or suggest an illuminated sign having a frame around a perimeter and a major surface with a translucent material

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thereover to define an interior for housing a light source.

Meeker et al. fail to remedy any of the above defects as Meeker et al. fail to disclose, teach, or suggest: any merchandising elements; any coordinated merchandising elements; or any illuminated sign having a frame about the perimeter as well as the other claimed features. Modifying Snyder in view of Meeker et al. to form Applicant's claim 25 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder**

Claims 33, 36, 38, and 40 have been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder. Applicant respectfully submits that each of the cited claims is patentable over Snyder at least for the reasons mentioned above in connection with Claim 31. Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder in view of Meeker et al.**

Claim 41 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of U.S. Patent 5,292,015 ("Bumbera"). Applicant respectfully



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traverses this rejection as applied to the amended claim.

Claim 41 depends from claim 31 and is patentable over Snyder as Snyder fails to disclose, teach or suggest "a base having spaced apart opposed face portion that define a receiving slot between them which extends generally laterally entirely across a top surface of the base". Accordingly, Snyder must also fail to disclose, teach or suggest space apart opposing walls that provide upright support to the signage. Modifying Snyder to form Applicant's claim 31 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Bumbera completely fails to disclose, teach, or suggest a receiving slot that extends generally laterally entirely across a top surface of the base. Modifying Snyder in view of Bumbera to form Applicant's claim 41 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

#### **Snyder**

Claims 1-6, 9, 10, and 14 have been rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent 3,640,389 ("Snyder"). Applicant respectfully submits

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that the rejection of claims 11 and 12 is moot due to the cancellation of those claims. Applicant respectfully traverses this rejection as applied to the remaining amended claims.

Regarding claim 1, Snyder completely fails to disclose, teach or suggest: (1) a first merchandising element; (2) any merchandising elements whatsoever; (3) any merchandising element that is shaped like the product; and (4) coordinated merchandising elements. Claims 2-5 depend from claim 1 and are also patentable over Snyder.

Claim 10 is patentable over Snyder as Snyder fails to disclose, teach or suggest: (1) a first merchandising element; (2) any merchandising elements whatsoever; (3) any flexible merchandising elements whatsoever; (4) any flexible merchandising element that has a body that extends through an angle of at least thirty-five degrees; (5) any merchandising element that is shaped like the product; and (6) coordinated merchandising elements. Claim 14 depends from claim 10 and is also patentable over Snyder.

Modifying Snyder to form the above cited claims requires the improper use of hindsight as the only suggestion for making the proposed modifications is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw

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this rejection.

**Snyder in view of Huston**

Claim 7 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of Huston. Applicant respectfully traverses this rejection as applied to the amended claim.

Claim 7 depends from claim 1. As detailed above, claim 1 is patentable over Snyder because Snyder completely fails to disclose, teach or suggest: (1) a first merchandising element; (2) any merchandising elements whatsoever; (3) any merchandising element that is shaped like the product; and (4) coordinated merchandising elements. Claims 2-5 depend from claim 1 and are also patentable over Snyder. Huston fails to remedy any of these defects. Additionally there is no motivation to make the suggested combination.

Modifying Snyder in view of Huston to form Applicant's claim 7 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder in view of Sourlis**

Claims 8 and 13 have been rejected under 35 U.S.C. § 103 as being

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unpatentable over Snyder in view of Sourlis. Applicant respectfully traverses this rejection as applied to the amended claim.

Claim 8 depends from claim 1 and claim 13 depends from claim 10. As detailed above, claims 1 and 10 are patentable over Snyder. Sourlis is directed to a MORTAR AND DEBRI SYSTEM for use in construction and clearly fails to remedy any defects related to merchandising, shelving, coordination, or the like. Additionally there is no motivation to make the suggested combination as Sourlis is directed to building stonework for use in physical structures.

Modifying Snyder in view of Sourlis to form Applicant's claim 8 and 13 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

**Snyder in of Schwab et al.**

Claim 15 has been rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of U.S. Patent 5,860,386 ("Schwab et al."). Applicant respectfully traverses this rejection as applied to the amended claim.

Claim 15 depends on claim 10. As detailed above claim 10 is patentable over Snyder. Claim 10 is patentable over Snyder as Snyder fails to disclose, teach or

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suggest: (1) a first merchandising element; (2) any merchandising elements whatsoever; (3) any flexible merchandising elements whatsoever; (4) any flexible merchandising element that has a body that extends through an angle of at least thirty-five degrees; (5) any merchandising element that is shaped like the product; and (6) coordinated merchandising elements.

Schwab et al. fail to remedy any of the above defects as Schwab et al. fail to disclose, teach, or suggest: any merchandising elements; or any coordinated merchandising elements. Modifying Snyder in view of Schwab et al. to form Applicant's claim 15 requires the improper use of hindsight as the only suggestion for making the proposed modification is found in Applicant's disclosure.

Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

#### INVITATION

If the Examiner believes that any additional matters need to be addressed to place this application in condition for allowance, the Examiner is respectfully invited to contact the undersigned, by telephone, at the Examiner's convenience.

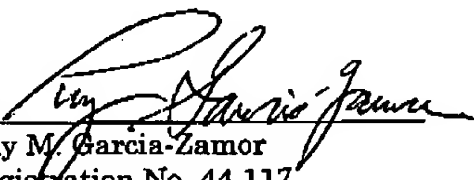
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### **CONCLUSION**

In view of the foregoing Amendment and Remarks, Applicants respectfully submit that the present application, including claims 1-10, 13-16, 19-26, 31-33, and 36-41, is in condition for allowance and a notice to that effect is respectfully solicited.

Respectfully submitted,

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Enclosures